

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

LOBBY CONFERENCE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Monday, May 11, 2015
11:55 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

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9 UNITED STATES DEPARTMENT OF JUSTICE

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14 On Behalf of the Government

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On Behalf of the Defendant

P R O C E E D I N G S

THE COURT: So I just thought before we go back out -- we're either at the end of the evidence or just about, and I just wanted to know so I could tell the jury what to expect, that's all. I didn't want to be doing it at the side.

First of all, with respect to the issue about whether the Court has ordered a change, I think I'm going to leave things where they are. I have looked at the clerk's note and the transcript of the April 16, 2014, conference, and it could easily be interpreted in a less than formal way that I had made an order.

The clerk's note, for example, says, "The government shall either allow the visits without contemporaneous monitoring or propose a plan of contemporaneous monitoring that excludes members of the investigative or prosecutorial team." The parties then worked something out in response to that.

That could be understood by some people as an order. I don't think it is in anybody's particular interest for us to dig down into what an order is in front of the jury and have them decide whether something has been ordered or not.

The witness actually answered the question both ways, eventually, and I think we'll just leave it at is. I think it will add confusion to the jury if we try to do anything more.

With respect to the Rule 29 motion, you mentioned in addition to past general reasons there was some particular

1 issue that you wanted to raise with respect to the Richard
2 matter. Could you put it in writing? That's all.

3 MR. BRUCK: Yes.

4 THE COURT: Present a Rule 29 -- what I'm interested
5 in is, of course, the general reasons that are applicable to
6 all counts, perhaps. But if you have some particularly
7 targeted reasons, I think it's best if they're expressed in
8 writing on the record, okay? Then we can address those.

9 Does this conclude the evidence after this witness?

10 MR. WEINREB: Yes.

11 THE COURT: Okay. So as I think we discussed on this
12 contingency, that we would take tomorrow and have the arguments
13 and charge beginning on Wednesday morning. And I want to be
14 able to tell the jury that. Obviously, they won't come
15 tomorrow, then.

16 My thought is we will prepare, based on what has been
17 submitted, a proposed verdict slip, try to get it to you as
18 soon as we can, if not by the end of the day today, then early
19 tomorrow so that we can get any comment on it. I will say that
20 I think it will be more like the defense proposal than the
21 government's proposal. I thought the government's proposal was
22 intriguing but a little too innovative for my taste, and so I
23 think we'll try to follow the more traditional model.

24 And I guess we will -- one we already talked about, we
25 will add in "18 years of age" to that because I think the

1 government's probably right, the jury will tell us that's what
2 their conclusion is.

3 MR. WEINREB: With respect to jury instructions, the
4 defense had submitted a request for several specific jury
5 instructions different from their sort of general Sand
6 instruction. We have an objection to one of them and some
7 slight suggestions with respect to the other two, so we'll file
8 that later today.

9 THE COURT: All right.

10 MR. BRUCK: And we have one more to send in today.

11 THE COURT: If you could get all of that in today, our
12 attention will first be to the verdict slip. That will be
13 today. I have not yet, myself, looked at the instructions yet.
14 And I will do that, and I'll spend most of the day tomorrow on
15 instructions, I expect.

16 MS. CLARKE: Will we get them tomorrow?

17 THE COURT: Yes, I'll try to get them to you by the
18 end of the day tomorrow.

19 Now, in terms of format for closings, I will again do
20 as I've done, begin the instructions before arguments, do the
21 gateways and everything. I think we'll put up the verdict slip
22 on the monitors for the jury as we do that so they can actually
23 visually follow it as we go through it and they'll know what to
24 expect.

25 Then we will have arguments.

1 Who is arguing?

2 MR. WEINREB: Mr. Mellin will do the initial closing
3 for the government.

4 THE COURT: Okay.

5 MS. CLARKE: And I'll do the closing for the defense.

6 THE COURT: Time estimates?

7 MR. MELLIN: Maybe a little over an hour?

8 THE COURT: Same or similar?

9 MS. CLARKE: Probably.

10 THE COURT: The process will probably -- if we were to
11 start at nine, it would probably take a nine-to-one block to
12 get the whole thing done.

13 MS. CLARKE: I think so. It depends on how outrageous
14 Mr. Mellin gets in his closing.

15 MR. WEINREB: And then rebuttal. You know, genuine
16 rebuttal as previously.

17 THE COURT: Right. You'll do that?

18 MR. WEINREB: I will. I won't belabor it.

19 THE COURT: Okay. Anything else before we go and tell
20 everybody this?

21 MS. CONRAD: You're going to tell them if they're
22 deliberating, I take it they will be sitting on Fridays?

23 THE COURT: Yes, I will tell them that.

24 MR. WEINREB: Nothing more from us.

25 THE COURT: Okay. You'll rest on the record in front

1 of the jury?

2 MR. WEINREB: Yes.

3 MS. CLARKE: In an abundance of caution, we renew the
4 Rule 29. I don't know how often we have to do that --

5 THE COURT: Fine. Noted. But we'll also await the
6 written version -- the written expression of it so that will be
7 clear on the record.

8 MS. CLARKE: Thank you.

9 (The proceedings adjourned at 12:00 p.m.)
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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 5/14/15